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DIAMOND FOUNDRY INC.

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO

E.Y. OROT ASSETS LTD., an Israeli company,
and OMEGA ECO DIAMONDS LTD., an
Israeli company,

Plaintiffs,

v.

DIAMOND FOUNDRY INC., a Delaware
corporation,

Defendant.

Case No. 3:24-cv-03836-TLT

**DEFENDANT DIAMOND FOUNDRY
INC.'S ANSWER AND AFFIRMATIVE
DEFENSES TO COMPLAINT**

AND

FIRST AMENDED COUNTERCLAIM

Judge: The Hon. Trina L. Thompson

Action Filed: June 26, 2024

Trial Date: February 9, 2026

DEMAND FOR JURY TRIAL

Defendant Diamond Foundry Inc. (“Defendant” or “Foundry”), through its undersigned counsel, hereby submits its Answer, Affirmative Defenses, and First Amended Counterclaim to the Complaint of Plaintiffs E.Y. Orot Assets Ltd. (“Orot”) and Omega Eco Diamonds Ltd. (“Omega,” and, together with Orot, “Plaintiffs”) dated June 26, 2024 (“Complaint”). Except as otherwise expressly admitted herein, Foundry denies each and every allegation in the Complaint, including without limitation any allegations contained in the Complaint’s prayer for relief, headings, and subheadings, except as otherwise expressly admitted below. In accordance with Federal Rule of Civil Procedure 8(b)(5), to the extent Foundry denies knowledge or information sufficient to form a belief as to the truth of an allegation, that allegation is deemed to be denied.

This Answer is based upon Foundry’s investigation to date, and Foundry expressly reserves the right to further amend its Answer to the extent provided for under applicable law. Foundry further states that, by filing this Answer, Foundry does not waive, and hereby expressly preserves, all defenses.

Subject to and expressly incorporating those reservations of rights and specifically responding to the allegations contained in the Complaint, and subject to and without waiving the other defenses stated herein, Foundry states as follows:

THE PARTIES

1. Foundry admits that Orot is a company organized under the laws of the State of Israel with its principal place of business in the City of Tel Aviv, Israel.

2. Foundry lacks sufficient information or knowledge to form a belief as to the truth or falsity of the allegations of Paragraph 2 and, on that basis, denies them.

3. Foundry admits it is a corporation organized under the laws of the State of Delaware with its principal place of business in the City of South San Francisco, County of San Mateo, in the State of California.

JURISDICTION AND VENUE

4. Paragraph 4 contains legal argument concerning the Court’s jurisdiction, and no response is required. To the extent a response is required, the law speaks for itself.

1 5. Paragraph 5 contains legal conclusions to which no response is required. To the
2 extent a response is required, Foundry admits that it resides in the judicial district of the
3 Northern District of California.

4 **NATURE AND SUBSTANCE OF THE CLAIM**

5 6. Foundry admits that Foundry and Orot entered into an agreement entitled
6 “Foundry-As-A-Service Agreement” (the “Agreement”) on October 14, 2020, in which Orot
7 agreed to pay Foundry a supply capacity fee of \$2,500,000 and agreed to purchase from
8 Foundry, for five years, monthly supplies of laboratory-manufactured diamonds. Foundry
9 admits that, under the Agreement, the validity, interpretation and enforceability of the
10 Agreement is to be governed and construed in all respects in accordance with the laws of the
11 State of California without regard to principles of conflict of laws. Foundry admits that, under
12 the Agreement, the Parties agreed to attempt to resolve any dispute, claim or controversy arising
13 out of or relating to the Agreement by mediation, which shall be conducted under the then
14 current mediation procedures of the CPR Institute for Conflict Prevention & Resolution or any
15 other procedure upon which the Parties may agree. Foundry admits that, under the Agreement,
16 the Parties agreed that their respective good faith participation in mediation is a condition
17 precedent to pursuing any other available legal or equitable remedy, including litigation,
18 arbitration or other dispute resolution procedures. To the extent that Paragraph 6 purports to
19 describe or characterize the Agreement, the Agreement speaks for itself. Foundry lacks
20 sufficient information or knowledge to form a belief as to the truth or falsity of the remaining
21 allegations in Paragraph 6 and, on that basis, denies them.

22 7. Foundry lacks sufficient information or knowledge to form a belief as to the truth
23 or falsity of the allegations of Paragraph 7 and, on that basis, denies them.

24 8. To the extent that Paragraph 8 purports to describe or characterize the Israeli
25 Complaint, the Israeli Complaint speaks for itself. Foundry lacks sufficient information or
26 knowledge to form a belief as to the truth or falsity of the remaining allegations in Paragraph 8
27 and, on that basis, denies them.

1 9. Foundry lacks sufficient information or knowledge to form a belief as to the truth
2 or falsity of the allegations of Paragraph 9 and, on that basis, denies them.

3 10. Foundry lacks sufficient information or knowledge to form a belief as to the truth
4 or falsity of the allegations of Paragraph 10 and, on that basis, denies them.

5 11. Foundry lacks sufficient information or knowledge to form a belief as to the truth
6 or falsity of the allegations of Paragraph 11 and, on that basis, denies them.

7 12. Foundry denies that Foundry failed to file a statement of defense with the Israeli
8 District Court within the time period under applicable Israeli procedural law. Foundry lacks
9 sufficient information or knowledge to form a belief as to the truth or falsity of the remaining
10 allegations in Paragraph 12 and, on that basis, denies them.

11 13. Foundry admits that on or about August 14, 2022, the Israeli District Court
12 entered a default judgment for Plaintiffs and against Foundry (the “Israeli Default Judgment”).
13 To the extent that Paragraph 13 purports to describe or characterize the Israeli Default
14 Judgment, the Israeli Default Judgment speaks for itself. Foundry lacks sufficient information or
15 knowledge to form a belief as to the truth or falsity of the remaining allegations in Paragraph 13
16 and, on that basis, denies them.

17 14. Foundry lacks sufficient information or knowledge to form a belief as to the truth
18 or falsity of the allegations of Paragraph 14 and, on that basis, denies them.

19 15. Foundry admits that after first submitting its statement of defense to the Israeli
20 District Court on June 6, 2022, Foundry again submit its statement of defense on September 3,
21 2022. Foundry filed its statement of defense, translated into Hebrew, on September 28, 2022. To
22 the extent that Paragraph 15 purports to describe or characterize Foundry’s September 3, 2022
23 statement of defense, Foundry’s September 3, 2022 statement of defense speaks for itself.
24 Foundry lacks sufficient information or knowledge to form a belief as to the truth or falsity of
25 the remaining allegations in Paragraph 15 and, on that basis, denies them.

26 16. Foundry admits that Herzog Fox & Neeman represented Foundry when Foundry
27 filed a motion to set aside the Israeli Default Judgment on October 6, 2022. Foundry lacks
28

1 sufficient information or knowledge to form a belief as to the truth or falsity of the remaining
2 allegations in Paragraph 16 and, on that basis, denies them.

3 17. Foundry admits that Plaintiffs and Foundry filed a joint stipulation for a stay of
4 proceedings before the Israeli District Court on December 8, 2022. Foundry lacks sufficient
5 information or knowledge to form a belief as to the truth or falsity of the remaining allegations
6 in Paragraph 17 and, on that basis, denies them.

7 18. Foundry admits that Plaintiffs and Foundry engaged in a mediation in front of the
8 Hon. Robert L. Dondero (Ret.) in San Francisco, California on May 3, 2023. Foundry lacks
9 sufficient information or knowledge to form a belief as to the truth or falsity of the remaining
10 allegations in Paragraph 18 and, on that basis, denies them.

11 19. Foundry admits that it retained the law firm Yigal Arnon as counsel in June 2023
12 and notified the Israeli District Court when it did so. Foundry lacks sufficient information or
13 knowledge to form a belief as to the truth or falsity of the remaining allegations in Paragraph 19
14 and, on that basis, denies them.

15 20. Foundry lacks sufficient information or knowledge to form a belief as to the truth
16 or falsity of the allegations of Paragraph 20 and, on that basis, denies them.

17 21. Foundry admits that Plaintiffs and Foundry submitted a joint stipulation to the
18 Israeli District Court on or around July 10, 2023. To the extent that Paragraph 21 purports to
19 describe or characterize the July 10, 2023, joint stipulation, the July 10, 2023, joint stipulation
20 speaks for itself. Foundry lacks sufficient information or knowledge to form a belief as to the
21 truth or falsity of the remaining allegations in Paragraph 21 and, on that basis, denies them.

22 22. Foundry admits that Plaintiffs and Foundry submitted a joint notification to the
23 Israeli District Court on or around August 17, 2023. To the extent that Paragraph 22 purports to
24 describe or characterize the August 17, 2023, joint notification, the August 17, 2023, joint
25 notification speaks for itself. Foundry lacks sufficient information or knowledge to form a belief
26 as to the truth or falsity of the remaining allegations in Paragraph 22 and, on that basis, denies
27 them.

1 23. Foundry admits that Foundry filed a reply in Israeli District Court to Plaintiffs'
2 opposition to Foundry's October 2022 motion to set aside the Israeli Default Judgment. Foundry
3 lacks sufficient information or knowledge to form a belief as to the truth or falsity of the
4 remaining allegations in Paragraph 23 and, on that basis, denies them.

5 24. Foundry admits that an Israeli District Court proceeding was at one time
6 scheduled for October 10, 2023, and then rescheduled. Foundry denies that a professional
7 interpreter was present at the rescheduled Israeli District Court proceeding. Foundry lacks
8 sufficient information or knowledge to form a belief as to the truth or falsity of the remaining
9 allegations in Paragraph 24 and, on that basis, denies them.

10 25. Foundry admits that the October 10, 2023, Israeli District Court proceeding was
11 continued following the events of October 7, 2023.

12 26. Foundry admits that Israeli District Court proceedings occurred on or about
13 January 10, 2024, and on or about January 18, 2024. Foundry denies that any non-counsel
14 representative of Foundry participated in the January 18, 2024, proceeding. Foundry lacks
15 sufficient information or knowledge to form a belief as to the truth or falsity of the remaining
16 allegations in Paragraph 26 and, on that basis, denies them.

17 27. To the extent that Paragraph 27 purports to describe or characterize the Israeli
18 District Court's January 19, 2024, Decision, the Israeli District Court's January 19, 2024,
19 Decision speaks for itself. Foundry lacks sufficient information or knowledge to form a belief as
20 to the truth or falsity of the remaining allegations in Paragraph 27 and, on that basis, denies
21 them.

22 28. To the extent that Paragraph 28 purports to describe or characterize the Israeli
23 District Court's January 19, 2024, Decision, the Israeli District Court's January 19, 2024,
24 Decision speaks for itself. Foundry lacks sufficient information or knowledge to form a belief as
25 to the truth or falsity of the remaining allegations in Paragraph 28 and, on that basis, denies
26 them.

27 29. To the extent that Paragraph 29 purports to describe or characterize the Israeli
28 District Court's January 19, 2024, Decision, the Israeli District Court's January 19, 2024,

1 Decision speaks for itself. Foundry lacks sufficient information or knowledge to form a belief as
2 to the truth or falsity of the remaining allegations in Paragraph 29 and, on that basis, denies
3 them.

4 30. To the extent that Paragraph 30 purports to describe or characterize the Israeli
5 District Court's January 19, 2024, Decision, the Israeli District Court's January 19, 2024,
6 Decision speaks for itself. Foundry lacks sufficient information or knowledge to form a belief as
7 to the truth or falsity of the remaining allegations in Paragraph 30 and, on that basis, denies
8 them.

9 31. Foundry admits that in February 2024, Foundry appealed the Israeli District
10 Court's January 19, 2024, Decision to the appellate division of the Israeli District Court and also
11 filed a motion to stay enforcement of the Israeli District Court's decision.

12 32. To the extent that Paragraph 32 purports to describe or characterize the Israeli
13 Appellate Court's February 15, 2024, Decision, the Israeli Appellate Court's February 15, 2024,
14 Decision speaks for itself. Foundry lacks sufficient information or knowledge to form a belief as
15 to the truth or falsity of the remaining allegations in Paragraph 32 and, on that basis, denies
16 them.

17 33. Foundry lacks sufficient information or knowledge to form a belief as to the truth
18 or falsity of the allegations of Paragraph 33 and, on that basis, denies them.

19 34. To the extent that Paragraph 34 purports to describe or characterize the Israeli
20 Appellate Court's March 12, 2024, Decision, the Israeli Appellate Court's March 12, 2024,
21 Decision speaks for itself. Foundry lacks sufficient information or knowledge to form a belief as
22 to the truth or falsity of the remaining allegations in Paragraph 34 and, on that basis, denies
23 them.

24 35. To the extent that Paragraph 35 purports to describe or characterize the Israeli
25 Appellate Court's March 12, 2024, Decision, the Israeli Appellate Court's March 12, 2024,
26 Decision speaks for itself. Foundry lacks sufficient information or knowledge to form a belief as
27 to the truth or falsity of the remaining allegations in Paragraph 35 and, on that basis, denies
28 them.

36. Foundry admits that it did not deposit with the Israeli District Court, in cash or letter of credit, NIS 3,000,000. Foundry lacks sufficient information or knowledge to form a belief as to the truth or falsity of the remaining allegations in Paragraph 36 and, on that basis, denies them.

37. To the extent that Paragraph 37 purports to describe or characterize the Israeli District Court's April 10, 2024, Decision, the Israeli District Court's April 10, 2024, Decision speaks for itself. Foundry lacks sufficient information or knowledge to form a belief as to the truth or falsity of the remaining allegations in Paragraph 37 and, on that basis, denies them.

38. To the extent that Paragraph 38 purports to describe or characterize the Israeli District Court's April 10, 2024, Decision, the Israeli District Court's April 10, 2024, Decision speaks for itself. Foundry lacks sufficient information or knowledge to form a belief as to the truth or falsity of the remaining allegations in Paragraph 38 and, on that basis, denies them.

39. Foundry lacks sufficient information or knowledge to form a belief as to the truth or falsity of the allegations of Paragraph 39 and, on that basis, denies them.

40. Foundry admits that, as of the date of the filing of the Complaint, Foundry had not filed any challenge to the Israeli District Court's April 10, 2024, Decision in Israeli court. Foundry lacks sufficient information or knowledge to form a belief as to the truth or falsity of the remaining allegations in Paragraph 40 and, on that basis, denies them.

41. Foundry lacks sufficient information or knowledge to form a belief as to the truth or falsity of the allegations of Paragraph 41 and, on that basis, denies them.

CLAIMS FOR RELIEF

First Claim for Relief

Domestication of Foreign Judgment

Pursuant to California Code of Civil Procedure Section 1713, *et seq.*

42. Foundry incorporates by references its responses to Paragraphs 1 through 41 of the Complaint as if set forth fully here.

43. Foundry denies the allegations in Paragraph 43.

1 44. Foundry denies the allegations in Paragraph 44.

2 45. Foundry denies the allegations in Paragraph 45.

3 46. Foundry denies the allegations in Paragraph 46.

4 47. Foundry denies the allegations in Paragraph 47.

5 48. Foundry admits that it stated in Israeli court filings that Foundry had filed a
6 Statement of Defense to the Israeli Complaint. Foundry lacks sufficient information or
7 knowledge to form a belief as to the truth or falsity of the remaining allegations in Paragraph 48
8 and, on that basis, denies them.

9 49. Foundry lacks sufficient information or knowledge to form a belief as to the truth
10 or falsity of the allegations of Paragraph 49 and, on that basis, denies them.

11 50. Foundry lacks sufficient information or knowledge to form a belief as to the truth
12 or falsity of the allegations of Paragraph 50, including a lack of information about which
13 proceeding is being referenced, and, on that basis, denies them.

14 51. Foundry denies the allegations in Paragraph 51.

15 52. Foundry denies the allegations in Paragraph 52.

16 53. Foundry denies the allegations in Paragraph 53.

17 54. Foundry denies the allegations in Paragraph 54.

18 55. Foundry lacks sufficient information or knowledge to form a belief as to the truth
19 or falsity of the allegations of Paragraph 55 and, on that basis, denies them.

20 56. Foundry lacks sufficient information or knowledge to form a belief as to the truth
21 or falsity of the allegations of Paragraph 56 and, on that basis, denies them.

22 57. Foundry denies the allegations in Paragraph 57.

23 **PRAYER FOR RELIEF**

24 Foundry denies that Plaintiffs are entitled to any recovery or relief in connection with
25 the allegations set forth in the Complaint, including, but not limited to, the allegations set forth
26 in the Prayer for Relief. Foundry demands the dismissal of the Complaint, its costs and expenses
27 of this action, and such other relief that the Court may deem appropriate
28

1 contravention to the Agreement's pre-litigation mediation requirement. Therefore, the Court
2 cannot recognize the Israeli Default Judgment under California's Uniform Foreign-Country
3 Money Judgments Recognition Act.

4 **Seventh Affirmative Defense**

5 The Israeli District Court judgment was rendered in circumstances that raise substantial
6 doubt about the integrity of the Israeli District Court with respect to the judgment. Therefore,
7 the Court cannot recognize the Israeli District Court judgment under California's Uniform
8 Foreign-Country Money Judgments Recognition Act.

9 **Eighth Affirmative Defense**

10 The proceedings leading to the Israeli District Court judgment were not compatible with
11 the requirements of due process of law. Therefore, the Court cannot recognize the Israeli
12 District Court judgment under California's Uniform Foreign-Country Money Judgments
13 Recognition Act.

14 **Ninth Affirmative Defense**

15 Plaintiffs' claim is barred by the doctrine of waiver.

16 **Tenth Affirmative Defense**

17 Plaintiffs' claim is barred by the doctrine of offset.

18 **Eleventh Affirmative Defense**

19 Plaintiffs' claim is barred by the doctrine of estoppel.

20 **Twelfth Affirmative Defense**

21 Plaintiffs' claim is barred by the doctrine of unclean hands.

22 **Thirteenth Affirmative Defense**

23 Plaintiffs' claim is barred by Plaintiffs' failure to mitigate damages.

24 **RESERVATION OF RIGHTS**

25 Foundry asserts the foregoing Affirmative Defenses without the benefit of discovery
26 from Plaintiffs. Foundry therefore reserves the right to supplement its Affirmative Defenses to
27 the extent any additional defenses become available or apparent during the course of discovery.
28 Foundry hereby reserves the right to amend its Answer and reserves all affirmative and other

defenses, at law or in equity, which become applicable after the substantial completion of discovery or otherwise in the course of litigation.

FIRST AMENDED COUNTERCLAIM

Pursuant to Rule 13 of the Federal Rules of Civil Procedure, Foundry asserted its Counterclaim on November 29, 2024. *See* Docket Entry No. 47. Pursuant to Rule 15(a)(1)(B) of the Federal Rules of Civil Procedure and in accordance with Local Rule 10-1, Foundry now hereby asserts the following First Amended Counterclaim against Plaintiff E.Y. Orot Assets Ltd. (“Orot”) as follows:

THE PARTIES

1. Foundry is a corporation organized under the laws of the State of Delaware with its principal place of business in the City of South San Francisco, County of San Mateo, in the State of California.

2. On information and belief, Orot is a company organized under the laws of the State of Israel with its principal place of business in the City of Tel Aviv, Israel.

JURISDICTION AND VENUE

3. Pursuant to Title 28, United States Code Section 1332, this Court has jurisdiction over this claim because Orot is a citizen of a foreign state and Foundry is a citizen of the State of California, and because the amount in controversy exceeds \$75,000.

4. Personal jurisdiction over Orot is proper because, *inter alia*, Orot has consented to the personal jurisdiction of this Court by commencing its action against Foundry in this judicial district.

5. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391(b)(2) and (3) because the diamond material manufactured pursuant to Foundry and Orot’s contract was manufactured in the United States, and Orot has consented to the personal jurisdiction of this Court by commencing its action against Foundry in this judicial district.

NATURE OF THE ACTION

6. Foundry incorporates by reference Paragraphs 1–57 of its foregoing Answer, and its foregoing Affirmative Defenses, as if fully pleaded herein.

1 7. Foundry and Orot entered into an agreement entitled “Foundry-As-A-Service
2 Agreement” (the “Agreement”) [ECF No. 38] on October 14, 2020, in which Orot agreed to pay
3 Foundry a supply capacity fee of \$2,500,000 and agreed to purchase from Foundry 1,250 carats
4 of laboratory-manufactured diamond material every month for five years.

5 8. Foundry negotiated, drafted, and executed the Agreement in California.

6 9. Foundry reasonably relied on Orot’s commitment to purchase 1,250 carats of
7 diamond material every month for five years when Foundry reserved manufacturing capacity
8 for Orot that could have been reserved for other customers.

9 10. Orot is responsible for the processing of the diamond material it agreed to
10 purchase from Foundry. Orot is additionally responsible for the marketing and sale of the
11 processed diamonds.

12 11. Orot and/or its purported business partner entity Omega Eco Diamonds Ltd.
13 (“Omega” and, together with Orot, “Plaintiffs”) made the first contractually mandated monthly
14 purchase of diamond material from Foundry in October 2020, which Foundry shipped to
15 Plaintiffs.

16 12. On information and belief, against the advisement of Foundry, Plaintiffs applied
17 high-pressure post-processing to the diamond material purchased from Foundry. High-pressure
18 post-processing can negatively affect the tint of diamonds.

19 13. In June 2021, Orot, with full knowledge of its obligations under the Agreement,
20 willfully refused to purchase the contractually mandated monthly offtake of diamond material.

21 14. In or around June 30, 2021, Orot sent Foundry a letter purporting to terminate the
22 Agreement and alleging “faultiness of the Diamonds.”

23 15. In or around July 8, 2021, Foundry sent Orot a letter, stating that “should [Orot]
24 not accept [Foundry’s] next shipment, [Orot] will be in default of the contract, and Diamond
25 Foundry shall have no further obligation to ship while retaining prior cash paid as per the
26 contract.”

27 16. Despite Foundry’s July 8, 2021, letter and Orot’s full knowledge that it was in
28 breach of the Agreement, Orot continued to willfully refuse to purchase the contractually

1 mandated monthly offtakes of diamond material. To this date, Orot has not purchased a
2 contractually mandated monthly offtake of diamond material since May 2021.

3 17. At all times, the diamond material provided by Foundry to Plaintiffs met the
4 standards specified in the Agreement, including what was agreed to regarding size, clarity, and
5 color distribution.

6 18. Orot owes Foundry at least \$7,619,750 in revenue under the Agreement.

7 19. By committing to purchase from Foundry 1,250 carats of laboratory-manufactured
8 diamond material every month for five years, and then willfully breaching that commitment less
9 than a year into the Agreement, Orot caused Foundry to reserve manufacturing capacity for Orot
10 that could have been reserved to a customer that would have honored its agreement with
11 Foundry. Therefore, Orot's misconduct of committing to 60 months of purchases that it would
12 not honor has damaged, and continues to damage, Foundry.

13 20. Plaintiffs initiated proceedings against Foundry in the District Court of Tel Aviv
14 of the State of Israel ("Israeli District Court") in or around March 2022, purporting to bring
15 claims related to the Agreement (the "Israeli Complaint").

16 21. Plaintiffs brought the Israeli suit in breach of the Agreement which requires the
17 Parties to mediate prior to initiating litigation.

18 22. Plaintiffs asserted that Articles 166(4), (4a), and (5) of the 2018 Israeli Civil
19 Procedure Regulations provided sufficient grounds for the Israeli District Court to have personal
20 jurisdiction over Foundry and for Plaintiffs to serve the Israeli Complaint on Foundry in
21 California.

22 23. As a matter of fact and Israeli law, the Israeli District Court did not have personal
23 jurisdiction over Foundry because Foundry is a California company with no ties to Israel and
24 the diamond material manufactured pursuant to the Agreement was manufactured in the United
25 States.

26 24. Foundry never availed itself of Israel or anticipated litigation in Israel.

27 25. The Parties chose the laws of the state of California as the governing law for the
28 Agreement.

34. Foundry performed all of its obligations under the Agreement. The diamond material provided by Foundry to Orot met the standards specified in the Agreement, including what was agreed to regarding size, clarity, and color distribution.

35. Despite Foundry's full performance under the Agreement and Orot's full awareness of its obligations under the Agreement, Orot breached the Agreement in or around June 2021 by willfully refusing to purchase the contractually mandated offtakes of diamond material for that month and then, in further breach of the Agreement, continuing to willfully refuse to purchase offtakes of diamond material. To this date, Orot has not purchased a contractually mandated monthly offtake of diamond material since May 2021.

36. As a direct and proximate result of Orot's breach, Foundry has no further obligations under the Agreement and has no obligation to return the supply capacity fee of \$2,500,000 or otherwise compensate Orot or Omega.

37. Further, as a direct and proximate result of Orot's breach, Foundry has been damaged in an amount no less than \$7,619,750.

38. This Count for Breach of Contract has not been adjudicated previously in a court with personal jurisdiction over Foundry.

PRAYER FOR RELIEF

WHEREFORE, Foundry denies that Plaintiffs' domestication action is valid under the Uniform Foreign-Country Money Judgments Recognition Act, asserts the Counterclaim of Breach of Contract against Orot, and respectfully requests that the Court:

- a. Deny Plaintiffs' domestication action and enter judgment for Foundry;
- b. Declare that Orot breached the Agreement and that Foundry has no obligation to return the supply capacity fee of \$2,500,000 or otherwise compensate Orot or Omega;
- c. Award Foundry direct damages in an amount to be determined at trial to compensate Foundry for the \$7,619,750 that Orot owes Foundry on the Agreement, plus pre-judgment interest and post-judgment interest;
- d. Award to Foundry its costs and expenses incurred in defending this action and prosecuting the Counterclaim, including attorneys' fees and costs and expert witness fees and

costs; and

e. Grant such other and further relief as the Court deems proper.

DEMAND FOR JURY TRIAL

On December 13, 2024, Foundry made a demand for trial by jury on all issues so triable.
See Docket Entry No. 48.

Dated: January 9, 2025

Respectfully submitted,

DLA PIPER LLP (US)

By: /s/ Jeffrey E. Tsai

JEFFREY E. TSAI

JAMES S. DAVIDSON

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DIAMOND FOUNDRY INC.*